

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

MICHAEL S. WHALEN,

Plaintiff,

v.

SALEM FIVE CENTS SAVINGS BANK,

Defendant.

Civil Action
No. 11-

NOTICE OF REMOVAL

**TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

The Defendant, Salem Five Cents Savings Bank (the “Bank”) submits the following Notice of Removal pursuant to Fed. R. Civ. P. 81(c), and states as follows:

I. Introduction.

1. Plaintiff filed suit against the Bank in a civil action, Essex Superior Court, Civil Action No. ESCV2011-00276-A (the “State Court Action”).
2. The Bank hereby removes the State Court Action to the United States District Court for the District of Massachusetts.

II. Nature of Suit.

1. In Plaintiff’s Complaint filed in the State Court Action, the Plaintiff has alleged, *inter alia*, that the Bank has breached the Helping Families Save Their Homes Act of 2009, Pub L. 111-12, § 211, 123 Stat. 1639, by refusing to modify the mortgage loan held by the Bank with respect to the Plaintiff. The Plaintiff has alleged that the Bank’s failure to comply with the federal law constitutes negligence and a violation of Massachusetts General Laws Chapter 93A. The Plaintiff has also alleged in Count III of the Complaint that the Bank has violated Massachusetts General Laws Chapter 183, § 54(d).

III. Basis for Removal.

1. Counts I and II of the Plaintiff's Complaint are based upon an alleged breach of a federal law, namely the Helping Families Save Their Homes Act of 2009. Accordingly, as set forth in 28 U.S.C. § 1441(a), the state court action is removable to this Court

IV. This Notice of Removal is Procedurally Correct.

1. The Bank consents to this removal as reflected by this Notice.

2. The Bank was first notified of the State Court Action when the Bank received a copy of the Summons and Complaint on or about February 24, 2011. Accordingly, the Bank has removed this action within the time permitted by 28 U.S.C. §1446(b).

3. Pursuant to Local Rule 81.1(a), the Bank will promptly request that the Clerk of the Essex County Superior Court prepare certified or attested copies of all records of proceedings in the State Court Action, and of all docket entries therein, and the Bank shall file same within twenty-eight (28) days of filing this Notice of Removal.

4. Venue is proper in this District Court pursuant to 28 U.S.C. §1441(a) because this District and Division embrace Essex County, Massachusetts where the State Court Action has been pending.

5. The Bank will properly file a copy of this Notice of Removal with the Clerk of the State Court in which the State Court Action has been pending and serve all removal documents to all counsel of record. See 28 U.S.C. §1446(d).

6. No act of Congress prohibits the removal of this action.

WHEREFORE, the Defendant, Salem Five Cents Savings Bank, respectfully gives notice that the State Court Action has been removed from Essex County Superior Court to the United States District Court for the District of Massachusetts pursuant to 28 U.S.C. §1441, and requests that this Court assume jurisdiction over this lawsuit. The Bank further requests all such other

relief, both general and special, at law and in equity, to which it may show itself to be justly entitled.

SALEM FIVE CENTS SAVINGS BANK

By its Attorneys,
RIEMER & BRAUNSTEIN LLP

Dated: March 16, 2011



Dennis E. McKenna, BBO # 556428
Riemer & Braunstein LLP
Three Center Plaza
Boston, Massachusetts 02108
(617) 523-9000

CERTIFICATE OF SERVICE

I, Dennis E. McKenna, Esquire, hereby certify that on this 16 day of March, 2011, I caused a true and accurate copy of the foregoing document to be served by first class mail, postage prepaid, upon the following: Josef Culik, Esquire, Culik Law P.C., 100 Cummings Center, Suite 107K, Beverly, Massachusetts 01915.



Dennis E. McKenna

1288044.1